



ADMINISTRATIVE COMMITTEE OF THE FEDERAL REGISTER

1 CFR Parts 2, 5, 8, 10, 11 and 12

[Docket OFR-2022-0001]

Discontinuation of *Public Papers of the Presidents* Book Series and Removal of Microfiche as Official Format of the *Federal Register* and Code of Federal Regulations

AGENCY: Administrative Committee of the Federal Register.

ACTION: Final rule; request for comment.

SUMMARY: This final rule with request for comment discontinues the *Public Papers of the Presidents of the United States* (“*Public Papers*”), an annual print edition of certain presidential documents. The *Public Papers* annual print edition is based on the text of the *Daily Compilation of Presidential Documents*, which is a daily online-only publication that will remain available free of charge on the internet. This rule also removes microfiche as an official format of the *Federal Register* and Code of Federal Regulations. Finally, the rule updates the relevant regulations to reflect the current location of the online formats of these publications and the current physical address of the Office of the Federal Register.

DATES: This final rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Comments must be submitted by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] to be considered.

ADDRESSES: You may send comments, identified by OFR-2022-0001, by any of the following methods:

- Federal eRulemaking Portal: www.Regulations.gov. Go to [Regulations.gov](https://www.Regulations.gov), search for

OFR-2022-0001, and locate this document from the “Documents” tab or go to www.regulations.gov/docket/OFR-2022-0001/document and locate this document in the docket.

- Email: fr.comments@nara.gov. Include OFR-2022-0001 in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Katerina Horska, Director of Legal Affairs and Policy, Office of the Federal Register, or Miriam Vincent, Staff Attorney, Legal Affairs and Policy, Office of the Federal Register at Fedreg.legal@nara.gov, or 202-741-6030.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

Under the Federal Register Act (44 U.S.C. chapter 15), the Administrative Committee of the Federal Register (“Administrative Committee” or “ACFR”) is responsible for issuing regulations governing *Federal Register* publications. The Administrative Committee has general authority under 44 U.S.C. 1506 to determine the manner and form for publishing the *Federal Register* and its special editions. The Administrative Committee is also responsible for regulations governing the Code of Federal Regulations (“CFR”). 44 U.S.C. 1510. Regulations promulgated by the ACFR under sections 1506 and 1510 are subject to approval by the President, who has delegated approval authority to the Attorney General and the Archivist of the United States. E.O. 10530, sec. 6(b), 3 CFR part 189 (1954); *see also* 3 U.S.C 301 note. The Administrative Committee, with the approval of the Acting Archivist and the Attorney General, is amending its regulations in 1 CFR parts 2, 5, 8, 10, 11, and 12 to discontinue one of the *Federal Register* special edition publications, the *Public Papers of the Presidents of the United States* (“*Public Papers*”) series, and to remove microfiche as an official format of the *Federal Register* and CFR. This rule also updates the physical address of the Office of the Federal Register (“OFR”).

A. Discontinuation of the Public Papers

The *Public Papers* is a special edition of the *Federal Register*, see 1 CFR 10.10, that is compiled and issued by the OFR. The publication started in 1957 in response to a recommendation of the National Historical Publications Commission.¹ The *Public Papers* initially contained the compilation of the weekly series of Presidential documents, the *Weekly Compilation of Presidential Documents* (“*Weekly Compilation*”). In 2009, the Administrative Committee discontinued the *Weekly Compilation*, replacing it with the *Daily Compilation of Presidential Documents* (“*Daily Compilation*”). See Availability and Official Status of the Compilation of Presidential Documents, 74 FR 3950, 3952 (Jan. 21, 2009). The *Daily Compilation* is a daily, online-only collection of the official publication of materials released by the White House Press Secretary. See 1 CFR 10.2, 10.3. It is available free of charge to the public. During the Carter Administration, the *Public Papers* became a compilation of the already compiled *Weekly Compilation* documents instead of a set of individually selected and curated papers. With the January 2009 change from the *Weekly Compilation* to the *Daily Compilation*, the *Public Papers* switched from compiling the *Weekly Compilations* from a particular time period to compiling the *Daily Compilations* from the same time period. 74 FR at 3950; see also 1 CFR 10.11, 10.12. Volumes of the *Public Papers* are generally published twice a year as physical, hard-bound books, with each volume spanning approximately a six-month period; the National Archives and Records Administration’s Office of Presidential Libraries, in partnership with the OFR, created electronic copies of the published volumes for online access.²

Currently, the *Public Papers* have limited reach; most of the materials are accessed online through the *Daily Compilation*. As of 2022, the Government Publishing Office (“GPO”) sells only approximately 13 to 20 copies of each volume. Discontinuing the *Public Papers* will not change the nature or quantity of presidential materials that are published; instead, it will change only the format of those materials. The materials will remain available to any person or entity that is interested in them because all presidential documents, including transcripts of speeches and other spoken remarks and photographs contained in the *Public Papers*, are already published

elsewhere—including in the *Daily Compilation*—in readily accessible formats. The *Daily Compilation* is also more timely; it is usually available within a few days of an event featuring the President, whereas the *Public Papers*, as a result of their lengthy production process, are available, at the soonest, months after the fact.

The discontinuation of the printed volumes would save government resources in production and publication, and the *Daily Compilation* would continue to provide public access to the same material. Therefore, this change will have no significant impact on the material that itself is included in the *Public Papers*. For these reasons, the Administrative Committee is discontinuing production of the *Public Papers*.

B. Removal of Microfiche as Official Format

Currently, the Administrative Committee regulations require that GPO produce the *Federal Register* and CFR in three formats: in paper, in microfiche, and in Portable Document Format (“PDF”) through GPO’s GovInfo website (www.govinfo.gov). 1 CFR 5.10, 8.6.³ Microfiche is a format consisting of a flat sheet of film on which writing or other information is stored and which can be accessed using a microfiche reader. Material stored in microfiche cannot be searched by keyword unless the material is separately digitized after the production of the microfiche itself. Because of (1) the widespread availability of more easily searchable online editions of the *Federal Register* and the CFR via GovInfo, (2) the ready availability of endorsed but unofficial internet formats of these publications on FederalRegister.gov (www.federalregister.gov) and eCFR (www.ecfr.gov), and (3) the limited availability of microfiche readers, microfiche is now a little-used alternative format for accessing those publications. Currently, there are no non-Government subscribers to microfiche, compared to the millions of users of the online formats of the *Federal Register* and eCFR.

On October 28, 2014, the Administrative Committee issued a Notice of Proposed Rulemaking (“omnibus NPRM”), which proposed to remove the list of official formats from the CFR and replace the list with regulations that describe in detail the factors the ACFR uses to

determine which formats will be official. Revision of Regulations, 79 FR 64133, 64134. In response to the proposed rule, two commenters expressed concern that removing the explicit identification of certain formats as official will impact the public by leading to discontinuation of the formats on which the public relies. These commenters believed that it is important that the ACFR learn about users' needs before removing microfiche as an official format. The Administrative Committee understands these commenters' concerns and asked GPO to provide the subscription numbers for microfiche formats of the *Federal Register* and CFR. As of September 6, 2022, there were no agencies receiving microfiche *Federal Register* subscriptions and only five agencies receiving five copies of the CFR in the microfiche format. Also, although some Federal depository libraries ("FDLs") received microfiche subscriptions in past years, all FDLs, by September 6, 2022, had discontinued their subscriptions to microfiche. Thus, the only microfiche subscribers at present are five Federal Government agencies for five copies of the CFR.

Additionally, of the more than 9,000 contractors that GPO works with, there is only one contractor that submitted bids for the creation of microfiche products in recent years. GPO therefore has difficulty finding multiple bidders when it attempts to contract for the publication of the microfiche formats of the *Federal Register* and CFR.

The limited number of subscribers, the scarcity of contractors continuing to produce microfiche, and the inability to actively search within this format (in contrast to online formats), demonstrate that the microfiche format is obsolete. Given the lack of microfiche use and the widespread availability of the *Federal Register* and CFR in other formats, removing microfiche as an official format will have no significant impact on the availability of material published in the *Federal Register* and CFR, and retaining that format would offer no benefit. The costs and administrative burden of maintaining the microfiche format are accordingly unjustified, and the Administrative Committee is removing microfiche as an official format of the *Federal Register* and the CFR.

II. Comments Requested

The ACFR welcomes comments related to any of the changes finalized in this rule and will consider these comments in making any future regulatory changes regarding the topics being currently addressed. If relevant, substantive adverse comments are received, the Administrative Committee may respond by publishing a supplemental final rule, addressing the comments in the final rule stemming from the omnibus NPRM, or initiating a new rulemaking.

III. Regulatory Analysis

The Administrative Committee developed this rule after considering numerous statutes and executive orders related to rulemaking. Below is a summary of the Administrative Committee's determinations after analysis of these statutes and executive orders.

A. Administrative Procedure Act ("APA")

The Administrative Committee has determined that notice and comment and a delay in the effective date of this rule are unnecessary under the exceptions to these requirements for "good cause." The APA provides that notice and comment are unnecessary "when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." 5 U.S.C. 553(b)(B). Similarly, a delay in the effective date is not required when the agency finds "good cause" for dispensing with the delay and publishes that finding with the rule. 5 U.S.C. 553(d)(3).

The "unnecessary" prong of the good cause exception applies "when an administrative rule is a routine determination, insignificant in nature and impact, and inconsequential to the industry and to the public." *N. Carolina Growers' Ass'n, Inc. v. United Farm Workers*, 702 F.3d 755, 766 (4th Cir. 2012) (quotation marks omitted). "Congress intended that rule making be exempted as unnecessary when amendments are minor or merely technical, and of little public interest." *Id.* (quotation marks omitted). Rules qualify for the good cause exception under the "unnecessary" prong when the agency is issuing "a minor rule or amendment in which the public

is not particularly interested.” *Id.* at 466–67 (quotation marks omitted); *see also Util. Solid Waste Activities Grp. v. E.P.A.*, 236 F.3d 749, 755 (D.C. Cir. 2001) (similar).

The “unnecessary” prong of the good cause exception applies to the discontinuation of the *Public Papers* because that discontinuation is inconsequential to any potentially affected industry and to the public at large. Discontinuing the *Public Papers* will not change the nature or quantity of presidential documents that are published; instead, it will simply change the format of those documents. The documents will remain available to any person or entity that is interested in them because all documents contained in the *Public Papers* are already published elsewhere in readily accessible formats. The discontinuation accordingly will have an “insignificant . . . impact” on any member of the public. *See N. Carolina Growers’ Ass’n*, 702 F.3d at 766.

For similar reasons, the “unnecessary” prong of the good cause exception applies to the removal of microfiche as an official format of the *Federal Register* and CFR; this removal is inconsequential to any potentially affected industry and to the public at large. All documents currently published in microfiche will remain available in other, easily accessible formats, such as the online and hard-copy formats of the *Federal Register* and CFR. The only subscribers to the microfiche format are a handful of Federal agencies. No individuals or institutions (whether part of the FDL network or otherwise) are receiving microfiche for their personal use or for library collections. The ACFR acknowledges that, in 2014, two comments on the omnibus NPRM suggested that members of the public still use microfiche, but now, eight years later⁴, zero individual members of the public subscribe to that format. Moreover, to the extent that members of the public might have once relied on microfiche formats accessible through FDLs, the fact that all FDLs have discontinued their microfiche subscriptions indicates that microfiche is no longer relevant to the public. Indeed, any member of the public who relied on an FDL to access the *Federal Register* or CFR through microfiche could use that same FDL’s computer resources to access these publications’ online formats. Finally, the scarcity of contractors available to create the microfiche format underscores the extent to which the public and members

of the printing industry have moved beyond microfiche. The ACFR accordingly believes that the good cause exception applies to this rule because the rule is “inconsequential to the industry and to the public.” *N. Carolina Growers’ Ass’n, Inc.*, 702 F.3d at 766.

The Administrative Committee also believes that good cause exists for making this rule effective without a 30-day delay from the date of publication in the *Federal Register*. The 30-day waiting period “is intended to give affected parties time to adjust their behavior before the final rule takes effect.” *Riverbend Farms, Inc. v. Madigan*, 958 F.2d 1479, 1485 (9th Cir. 1992). Here, members of the public will not need time to adjust their behavior because all of the information and documents contained in the *Public Papers*, the *Federal Register*, and the CFR are either already available online or are published online almost immediately after their production. Thus, even in the absence of a delay in the date of this rule, members of the public will experience no interruption in their access to government information and documents.

Although the good cause exception applies to this rule, the ACFR welcomes comments from interested persons on all matters related to the final rule. The ACFR will consider these comments in making any future regulatory changes regarding the topics addressed in this rulemaking.

B. Executive Order 12866 and 13563

The final rule has been drafted in accordance with the principles of section 1(b) of Executive Order 12866 (Principles of Regulation), and Executive Order 13563 (Improving Regulation and Regulatory Review). The Administrative Committee has determined that this final rule is not a significant regulatory action, as defined under section 3(f) of Executive Order 12866. Because the Office of Management and Budget did not review this rule under section 6(b) of Executive Order 12866, the ACFR need not publish any information under section 6(a)(3)(E) of that order.

C. Regulatory Flexibility Act

The Administrative Committee certifies that this rule will not have a significant economic

impact on a substantial number of small entities. This rule imposes no requirements on small entities. Also, as described above, only a single contractor submitted bids for the production of microfiche products to GPO in recent years. Thus, even assuming the contractor in question qualifies as a small entity, and even assuming that removing microfiche as an official format would affect that entity, the rule will not have a significant economic impact on a “substantial number” of small entities. *See* 5 U.S.C. 605(b). Finally, any member of the public, including persons employed by or representing small entities, can continue to access *Federal Register* publications for free through GPO’s website, www.govinfo.gov.

D. Federalism

This rule has no federalism implications under Executive Order 13132 (Federalism). It does not impose compliance costs on State or local governments or preempt State law.

E. Congressional Review

This rule is not a major rule as defined by 5 U.S.C. 804(2). The Administrative Committee will submit a rule report, including a copy of this final rule, to each House of the Congress and to the Comptroller General of the United States as required under the congressional review provisions of the Small Business Regulatory Enforcement Fairness Act of 1986.

¹ Office of the Federal Register, Public Papers of the Presidents (last reviewed Nov. 15, 2022), <https://www.archives.gov/federal-register/publications/presidential-papers.html>.

² *Supra* note 1. This rule discontinues the *Public Papers* as a whole, and the series will end with the Obama Administration. As of [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], the Administrative Committee will not produce any new volumes in any format (in paper or online). Digital copies of existing volumes will remain available.

³ The regulations currently refer to GPO Access, a predecessor website of GovInfo. GPO developed GovInfo and its predecessor websites to implement GPO's mandate under 44 U.S.C. 4101(a) to "provide a system of online access to the Congressional Record, the Federal Register," and other documents. This rule amends sections 5.10, 8.6, 11.2, and 11.3 of ACFR's regulations to reflect the name of the current website.

⁴ During these eight years, the Government has continued to make online access to its official publications easier for the public. *See, e.g.*, Press Release, GPO to Retire the Federal Digital System Website (Nov. 29, 2018) (describing the launch of the GovInfo website and the "many enhancements" it offered to help the public access documents from all three branches of the Federal Government).

List of Subjects

1 CFR Part 2

Federal Register publications, Government publications, Organization and functions (Government agencies).

1 CFR Part 5

Administrative practice and procedure, Federal Register publications, Government publications.

1 CFR Part 8

Administrative practice and procedure, Code of Federal Regulations, Government publications.

1 CFR Part 10

Government publications, Presidential documents, Public Papers of the Presidents of the United States, Daily Compilation of Presidential Documents.

1 CFR Part 11

Code of Federal Regulations, Federal Register, Government publications, Daily Compilation of Presidential Documents.

1 CFR Part 12

Code of Federal Regulations, Compilation of Presidential Documents, Federal Register publications, Government publications, Public Papers of Presidents of U.S.

For the reasons discussed in the preamble, the Administrative Committee of the Federal Register, with the approval of the Acting Archivist of the United States and the Attorney General, amends 1 CFR parts 2, 5, 8, 10, 11, and 12 as set forth below:

PART 2—[AMENDED]

1. The authority citation for part 2 is revised to read as follows:

Authority: 44 U.S.C. 1506, 4101; sec. 6, E.O. 10530, 19 FR 2709; 3 CFR, 1954–1958 Comp., p. 189; 1 U.S.C. 112, 113.

2. In § 2.3, revise paragraph (b) to read as follows:

§ 2.3 Office of the Federal Register; location; office hours.

* * * * *

(b) The office is located at 732 N. Capitol Street, NW, suite A-734, Washington, DC.

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§ 2.5 [Amended]

3. In § 2.5(c), remove the text “the “Public Papers of the Presidents of the United States,””.

PART 5—[AMENDED]

4. The authority citation for part 5 is revised to read as follows:

Authority: 44 U.S.C. 1506, 4101; sec. 6, E.O. 10530, 19 FR 2709; 3 CFR, 1954–1958 Comp., p. 189.

§ 5.10 [AMENDED]

5. In § 5.10, remove the text “the following formats: paper; microfiche; and online on GPO Access” and add, in its place, the text “paper and online on www.govinfo.gov”.

PART 8—[AMENDED]

6. The authority citation for part 8 is revised to read as follows:

Authority: 44 U.S.C. 1506, 4101, 1510; sec. 6, E.O. 10530, 19 FR 2709, 3 CFR, 1954–1958 Comp., p. 189.

§ 8.6 [Amended]

7. Amend § 8.6 as follows:
 - a. Remove paragraph (a)(2);
 - b. Redesignate paragraph (a)(3) as paragraph (a)(2);
 - c. In newly redesignated paragraph (a)(2), remove the text “GPO Access” and add, in its place, the text “www.govinfo.gov”; and
 - d. In paragraph (b), remove the text “, set requirements for microfiche images,” .

PART 10—[AMENDED]

8. The authority citation for part 10 is revised to read as follows:

Authority: 44 U.S.C. 1506, 4101; sec. 6, E.O. 10530, 19 FR 2709, 3 CFR, 1954–1598 Comp., p. 189.

Subpart B—[Removed and Reserved]

9. Remove and reserve subpart B, consisting of §§ 10.10 through 10.13.

PART 11—[AMENDED]

10. The authority citation for part 11 is revised to read as follows:

Authority: 44 U.S.C. 1506, 1510, 4101; sec. 6, E.O. 10530, 19 FR 2709, 3 CFR, 1954–1958 Comp., p. 189.

§ 11.1 [Amended]

11. In § 11.1, remove the words “and microfiche editions” and add, in their place, the word “format”.

12. Revise § 11.2 to read as follows:

§ 11.2 Federal Register.

(a) The subscription price for the paper format of the daily *Federal Register* is \$749 per year. A combined subscription to the daily *Federal Register*, the monthly *Federal Register* Index, and the monthly LSA (List of CFR Sections Affected) is \$808 per year for the paper

format. Six-month subscriptions for the paper format are also available at one-half the annual rate. Those prices exclude postage. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of a single copy of the daily *Federal Register*, including postage, is based on the number of pages: \$11 for an issue containing fewer than 200 pages; \$22 for an issue containing 200 to 400 pages; and \$33 for an issue containing more than 400 pages.

(b) The online format of the *Federal Register* is available on Government Publishing Office websites.

13. Revise § 11.3 to read as follows:

§ 11.3 Code of Federal Regulations.

(a) The subscription price for a complete set of the Code of Federal Regulations is \$1,019 per year for the bound, paper format. Those prices exclude postage. The prevailing postal rates will be applied to orders according to the delivery method requested. The Government Publishing Office (GPO) sells individual volumes of the paper format of the Code of Federal Regulations at prices determined by the Superintendent of Documents under the general direction of the Administrative Committee.

(b) The online format of the Code of Federal Regulations is available on GPO websites.

PART 12—[AMENDED]

14. The authority citation for part 12 is revised to read as follows:

Authority: 44 U.S.C. 1506, 1510, 4101; sec. 6, E.O. 10530, 19 FR 2709; 3 CFR, 1954–1958 Comp., p. 189.

§ 12.2 [Amended]

15. In § 12.2(a), remove the words “or microfiche”.

§ 12.5 [Removed and Reserved]

16. Remove and reserve § 12.5.

Debra Steidel Wall,

Chair, Administrative Committee of the Federal Register.

Hugh N. Halpern,

Member, Administrative Committee of the Federal Register.

Rosemary Hart,

Member, Administrative Committee of the Federal Register.

Approved:

Merrick B. Garland,

Attorney General.

Debra Steidel Wall,

Acting Archivist of the United States.

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